

MORRISON & FOERSTER LLP

ORIGINAL

SAN FRANCISCO
LOS ANGELES
PALO ALTO
WALNUT CREEK
SACRAMENTO
ORANGE COUNTY
SAN DIEGO
DENVER

ATTORNEYS AT LAW
2000 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20006-1888
TELEPHONE (202) 887-1500
TELEFACSIMILE (202) 887-0763

DOCKET FILE COPY ORIGINAL

NEW YORK
PARIS
LONDON
BRUSSELS
BEIJING
HONG KONG
SINGAPORE
TOKYO

January 19, 2000

Via Messenger

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

RECEIVED
JAN 19 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Federal-State Joint Board on Universal Service: Promoting
Deployment and Subscribership in Unserved and Underserved
Areas, Including Tribal and Insular Areas -- CC Docket No. 96-45

Dear Ms. Salas:

The Miami Tribe of Oklahoma (the "Miami Tribe") submits the following reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking concerning the extension of telecommunications services to unserved and underserved areas, including tribal lands.¹ The Miami Tribe is pleased with the recent steps taken by the FCC to ensure the availability of affordable basic and advanced telecommunications services in Indian Country. As the Commission has recognized, access to such services is of critical importance to the health and welfare of tribes and their members.² Although the FNPRM and the commenters in this proceeding raise many important issues for Indian Country, the Miami Tribe will limit its reply comments to a few very important matters.

As an initial matter, the comments filed thus far demonstrate that telecommunications issues in Indian Country are varied and that no single solution will serve all tribes. For example, Gila River Telecommunications, Inc. points out that forcing tribal carriers to compete for universal service funding ultimately could harm the Commission's universal service goals.³ The Crow Tribal Council, on the other hand, argues that just the prospect of competition on the reservation has resulted in an

¹ Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and CC Docket No. 96-45, FCC 99-204 (Sep. 3, 1999) ("FNPRM").

² See FNPRM at ¶ 2.

³ Comments of Gila River Telecommunications, Inc. at 2.

No. of Copies rec'd 014
List A B C D E

MORRISON & FOERSTER LLP

Magalie Roman Salas
January 19, 2000
Page Two

expansion of existing local calling areas.⁴ The Tuscarora Nation of New York, however, cannot even get service in the first instance, much less competitive services. Thus, it is clear that the Commission must review carefully its regulatory actions as they affect individual tribes rather than seeking broad solutions that may not address individual tribal needs.

In addition, as a number of commenters have noted,⁵ absent from the FNPRM is a proposal for a formal policy statement that clearly defines the relationships among, and responsibilities of, the FCC, the tribes, the service providers and, where appropriate, the States, with respect to telecommunications services on tribal lands. Such a statement is critical to the FCC's efforts and must be developed in advance of any specific action in Indian Country. Although the Miami Tribe shares the Commission's sense of urgency for bringing service to unserved areas, the Commission must proceed in a manner consistent with tribal sovereignty. Specifically, the Commission must consult on a government-to-government basis with affected tribes prior to approving any expansions of service into Indian Country. It is a well established rule in Federal Indian law that tribes retain significant "control over nonmember conduct on tribal land."⁶ Therefore, a significant goal of the consultation process will be to ensure that companies that seek FCC designation and federal funds to provide service to tribal lands can demonstrate that they have the intent and ability to provide such service, including the existence of any necessary consent, contract, or other agreement with the tribal authority.

Finally, the Miami Tribe supports those commenters that argue that the Commission must make universal service support available for more than just "voice-only" solutions.⁷ Tribal residents must have the same level of access to the Internet and other advanced services as subscribers in non-rural and urban areas. This requires, at the very least, modem dial-up speeds equivalent to those available to urban telephone subscribers. The Commission must not, therefore, support regulatory solutions that will encourage carriers to provide inferior services in Indian Country on the sole basis that "any service is better than no service."

⁴ Crow Tribal Council Comments at 2.

⁵ See e.g., Joint Comments Of The Salt River Pima-Maricopa Indian Community And The National Tribal Telecommunications Alliance, Comments of the Tohono O'odham Nation and the Tohono O'odham Utility Authority.

⁶ *Montana v. United States*, 450 U.S. 544, 557 (1981).

⁷ See e.g., Comments of *Skybridge*, LLC at 8; Comments of the Rural Utility Service at 4; Comments of the State of Alaska at 19; Comments of Motorola and Iridium North America at 10.

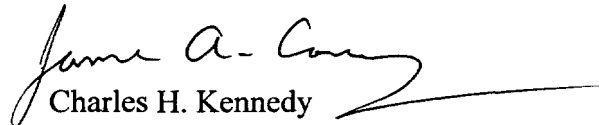
MORRISON & FOERSTER LLP

Magalie Roman Salas
January 19, 2000
Page Three

Aside from these very important threshold issues, the Miami Tribe will reserve comment in this proceeding. However, the Miami Tribe fully supports, and hereby incorporates by reference, the comments filed jointly in this proceeding by the Salt River Pima-Maricopa Indian Community and the National Tribal Telecommunications Alliance and its members.

The Miami Tribe looks forward to consultation with the Commission on these very important issues.

Respectfully Submitted,



Charles H. Kennedy

James A. Casey

MORRISON & FOERSTER LLP

2000 Pennsylvania Avenue, N.W.

Suite 5500

Washington, D.C. 20006

(202) 887-1500

Counsel for the Miami Tribe of Oklahoma